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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/083,868	02/26/2002	Gregg S. Sutton	CRD-0991	1377

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PHILIP S. JOHNSON  
JOHNSON & JOHNSON  
ONE JOHNSON & JOHNSON PLAZA  
NEW BRUNSWICK, NJ 08933-7003

EXAMINER
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THALER, MICHAEL H

ART UNIT	PAPER NUMBER
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3731

DATE MAILED: 02/01/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/083,868	<b>Applicant(s)</b> SUTTON ET AL.	
	<b>Examiner</b> Michael Thaler	<b>Art Unit</b> 3731	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 06 December 2004.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-7 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-7 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

Art Unit: 3731

Claims 1-7 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In claim 1, lines 14-15, it is unclear if "the openings defining a substantially circumferential configuration" means that the openings, as a group, are configured such that they extend circumferentially around the longitudinal axis of the filter (in view of the singular term "a...configuration" or if it means that each opening defines a circumferential configuration. If the latter is correct, then "configuration" should be plural.

Claims 1-7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kaganov et al. (5,876,367) in view of Gilson et al. (6,726,701). Kaganov et al., in figure 2, disclose housing 10 having a proximal end (the right end) comprising a connector (the proximal balloon 35 shown in figure 6 and which is disclosed as being included in the figure 2 embodiment in col. 10, lines 40-44) adapted to connect to a hose (i.e. the blood vessel. Alternatively, balloon 35 is inherently capable of being connected to a man-made hose either inside or outside the blood vessel. The hose could be outside the blood vessel since the proximal ends of both tubular members 10 and 14 could be located outside the blood vessel while the distal end of the

Art Unit: 3731

shunt is inside the blood vessel) and a distal end comprising a distal member (the left branch of housing 10) having two openings 13, 18, wherein the housing comprises a first lumen 11 and a second lumen 15 extending from a port 16 to an opening 18 and vascular filter system 41, 42 comprising a filter membrane support structure (e.g. the umbrella frame described in col. 9, lines 64-67) and a filter membrane having openings and having fibers extending therefrom (the threads which make up the filter, noting the term "thread" in col. 8, line 1 and that threads, by definition, include fibers and noting that these fibers extend from the openings in a direction away from the openings). Kaganov et al. fail to disclose the openings as having variable diameters with respect to each other. However, Gilson et al. teach that the diameters of the openings for a blood filter vary with respect to each other (noting the term "average" in the phrase "average diameter" in col. 12, line 40 which indicates varying diameters). This arrangement has the apparent advantage of permitting easy manufacture of the openings by not requiring them to be perfectly identical in size, thus permitting a wide tolerance of the size. It would have been obvious to permit the Kaganov et al. openings to have variable diameters with respect to each other so that it too would have this advantage. The Kaganov et al. system is

Art Unit: 3731

inherently capable of being used as a cardiopulmonary bypass filter system. As to claim 2, the Kaganov et al. system is inherently capable of being connected to a cardiopulmonary bypass machine by for example, connecting the right end of tube 10 to it via a hose. As to claims 3 and 4, Kaganov et al. disclose distal flange (the distal balloon 35 shown in figure 6 and which is disclosed as being included in the figure 2 embodiment in col. 10, lines 40-44). As to claim 7, Kaganov et al. fail to disclose the openings being non-uniformly spaced. However, Gilson et al. teach that openings in a blood filter should be so spaced in order to optimize the filtering process (col. 13, lines 18-27). It would have been obvious to make the openings of the Kaganov et al. filter non-uniformly spaced so that it too would have this advantage.

Applicant's arguments filed Dec. 6, 2005 have been fully considered but they are not persuasive for the reasons set forth above.

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action

Art Unit: 3731

is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael Thaler whose telephone number is (571)272-4704. The examiner can normally be reached Monday to Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anhtuan T. Nguyen can be reached on (571)272-4963. The fax phone number for the organization where this application or proceeding is assigned is (703)872-9306.

mht  
1/26/05



MICHAEL THALER  
PRIMARY EXAMINER  
ART UNIT 3731